

EXHIBIT 8

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION)
_____) Master File
_____) No. 01-CV-12257-PBS
THIS DOCUMENT RELATES TO:)
_____) Subcategory
_____) No. 06-CV-11337-PBS
United States of America,)
ex rel. Ven-A-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
CIVIL ACTION NO. 06-11337-PBS) VOLUME II

Videotaped Deposition of JAMES W.
HUGHES, Ph.D., at 77 West Wacker Drive, 35th
Floor, Chicago, Illinois, commencing at the hour
of 9:09 a.m. on Wednesday, May 6, 2009.

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<p style="text-align: right;">Page 302</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 THE VIDEOGRAPHER: Today's date is May</p> <p>4 6, 2009. We are on the record at 9:09 a.m.</p> <p>5</p> <p>6 JAMES W. HUGHES,</p> <p>7 having been previously duly sworn, was examined</p> <p>8 and testified further as follows:</p> <p>9</p> <p>10 EXAMINATION (Continuing)</p> <p>11 BY MR. LAVINE:</p> <p>12 Q. Welcome back, Dr. Hughes.</p> <p>13 A. Thank you.</p> <p>14 Q. I just wanted to ask some follow-up</p> <p>15 questions about some of your points that you made</p> <p>16 regarding Dr. Duggan's analysis of the Medicare</p> <p>17 arrays.</p> <p>18 A. Yes.</p> <p>19 Q. And let me just go through the points.</p> <p>20 I think I might be able to ask one question about</p> <p>21 all of them. If we need to separate them out,</p> <p>22 just let me know.</p>	<p style="text-align: right;">Page 304</p> <p>1 correct Abbott NDCs were in every array.</p> <p>2 A. Okay. So that is the point that he</p> <p>3 looked to find a price that matched an Abbott</p> <p>4 price but doesn't offer, doesn't know with any</p> <p>5 degree of certainty that it is in fact the Abbott</p> <p>6 price, that there was not some other drug, some</p> <p>7 other NDC, that was either in the array</p> <p>8 legitimately or in the array by mistake that could</p> <p>9 have that price.</p> <p>10 He said that he had, in his rebuttal he</p> <p>11 says that he had checked, but, again, it's not</p> <p>12 clear to me exactly what he had checked.</p> <p>13 So as to the exact, I'm sorry,</p> <p>14 scientific methodology?</p> <p>15 Q. Yes.</p> <p>16 A. Okay. So I mean he's forming, in effect</p> <p>17 he's forming a hypothesis, and the hypothesis is</p> <p>18 that \$10.16 whenever I see that, that's always an</p> <p>19 Abbott price.</p> <p>20 Again, the idea is that it's an</p> <p>21 assumption on his part. There's no scientific</p> <p>22 basis on his part for assuming that every time you</p>
<p style="text-align: right;">Page 303</p> <p>1 You said that he hasn't shown the</p> <p>2 correct Abbott NDCs were in each array. He hasn't</p> <p>3 shown that Abbott's price moved the median.</p> <p>4 He hasn't shown all the arrays to be,</p> <p>5 well, I have the word "identical," but similar</p> <p>6 enough within the sample or the extrapolation.</p> <p>7 There's no evidence that Abbott was the</p> <p>8 only manufacturer whose AWP was higher than the</p> <p>9 actual average selling price. And that he hasn't</p> <p>10 shown that a hundred percent of the sales of the</p> <p>11 products under that J-Code were of Abbott</p> <p>12 products.</p> <p>13 And the question about all of those is</p> <p>14 what is the underlying scientific methodology that</p> <p>15 you say Dr. Duggan failed to follow with respect</p> <p>16 to each of those issues?</p> <p>17 A. Why don't you give them to me one at a</p> <p>18 time, and then we'll run through them because I</p> <p>19 understand it forms a single question but it</p> <p>20 doesn't really form a single answer.</p> <p>21 Q. Okay. Fair enough.</p> <p>22 So first, that he hasn't shown the</p>	<p style="text-align: right;">Page 305</p> <p>1 look at a Medicare array and see \$10.16, there's</p> <p>2 no scientific principle, no scientific</p> <p>3 methodology, that says oh, well, that must be an</p> <p>4 Abbott price.</p> <p>5 So, again, when one is making an</p> <p>6 assumption, and as I said before, I'm not against</p> <p>7 assumptions, I'm not against all assumptions, but</p> <p>8 you need to provide, you need to provide a basis</p> <p>9 in the evidentiary record or some sort of basis,</p> <p>10 economic theory if you like, that if there's some</p> <p>11 economic law that says \$10.16 is a price that is</p> <p>12 reserved for Abbott NDCs -- I'm being facetious</p> <p>13 but you understand what I'm saying -- that he</p> <p>14 provides no such basis to support that assumption</p> <p>15 that he's making.</p> <p>16 Again, the evidence that he does have</p> <p>17 given that there's no set methodology for forming</p> <p>18 arrays, there's no set methodology for deciding</p> <p>19 whose products are in the arrays, which products</p> <p>20 are in the arrays, products get into arrays by</p> <p>21 mistake, products of the wrong dosage, products of</p> <p>22 the wrong type, get into the arrays.</p>

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<p style="text-align: right;">Page 310</p> <p>1 put them out there. And then it's up to the 2 reader to decide, and this is true in the economic 3 literature as I understand it, you put your 4 assumptions forward because sometimes you have to 5 make them in order to move the analysis forward, 6 and then it's up to the reader, it's up to the 7 journal editor, it's up to referees, if the paper 8 is published it's up to the people who read it to 9 decide whether they think that assumption is well 10 founded. 11 There's plenty of examples of say 12 journal articles where a researcher will find a 13 certain result, you know, particularly in economic 14 theory. But the result may depend on an 15 assumption that nobody really believes in. 16 So that piece of work may go forward, 17 may even be published, but it doesn't have much 18 impact because the consensus of the readers is 19 that that assumption just doesn't make any sense 20 under the circumstances. 21 BY MR. LAVINE: 22 Q. So when Dr. Duggan in his analysis fails</p>	<p style="text-align: right;">Page 312</p> <p>1 analysis that as one of the assumptions that their 2 analysis is based on is that demand curves don't 3 really slope downward but demand curves slope 4 upward, first of all, that assumption needs to be 5 stated. 6 Second of all, the researcher needs to 7 put a reason why contrary to everything else 8 everybody knows, everybody believes about demand 9 curves, this person is saying that they slope 10 upwards. And then you put the work out there and 11 people, readers, will choose to believe or not 12 believe your work based on whether they believe or 13 don't believe that assumption. 14 Q. All right. So when Dr. Duggan fails to 15 show the correct Abbott NDCs were in the array, 16 he's failed to state his assumption and he's 17 failed to support his assumption? 18 MR. BERLIN: Objection, form. 19 THE WITNESS: Well, yes, he's failed to 20 state his assumption, he's failed to support his 21 assumption. 22 But, remember, he's assuming that these</p>
<p style="text-align: right;">Page 311</p> <p>1 to show the correct Abbott NDCs were in the 2 arrays, that fails to meet a standard in economics 3 of not being allowed to make unfounded 4 assumptions? 5 A. State your assumptions and state your 6 foundation for the assumptions, neither of which 7 Dr. Duggan does, that's my criticism, all right. 8 Then it's up to readers to decide 9 whether or not that's a reasonable assumption 10 under the circumstances. 11 Q. I just want to make sure I'm 12 understanding. 13 One of the critiques is that Dr. Duggan 14 hasn't shown the correct NDCs were in the array, 15 and the standard that he's failing to meet is the 16 requirement that in economic analysis your 17 assumptions need to be stated, and he's failed to 18 do that. 19 A. The assumptions need to be stated, and 20 they need to be supported. You need to say here's 21 why I'm making this assumption. 22 I mean if somebody does an economic</p>	<p style="text-align: right;">Page 313</p> <p>1 are Abbott NDCs. He's using that to calculate his 2 damage calculation, he's using it to calculate his 3 damages for that carrier for that period. He's 4 then attributing a hundred percent of that damage 5 to Abbott. 6 It certainly seems well within the 7 expectations of best practices in economics that 8 you provide some basis for the belief that just 9 because I see \$10.16 that that is representative 10 of an Abbott NDC and not representative of 11 something that's in there either intentionally or 12 by mistake. And he fails to do that. 13 BY MR. LAVINE: 14 Q. Where would I go to see an objective 15 description of those requirements you just 16 described? 17 MR. BERLIN: Objection, form. 18 THE WITNESS: Could you read back my 19 response, please, my last response. 20 (The record was read back as 21 requested.) 22 THE WITNESS: As I was saying yesterday,</p>

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<p style="text-align: right;">Page 314</p> <p>1 when one's performing, when one uses 2 extrapolation, one's by definition introducing 3 error into the analysis because you are not using 4 actual data, you're extrapolating from one 5 situation into another. 6 So statistically speaking, you're going 7 to be introducing error because you're creating 8 data, you're not using actual data. 9 That error from extrapolation is going 10 to be compounded if where you're extrapolating to, 11 the data that you're extrapolating to, in this 12 case -- excuse me. Let me try that again. 13 The data that you're using for the 14 extrapolation, in this case the purported Abbott 15 NDC that he says that he sees in arrays, if that's 16 not accurate he's introduced yet another degree of 17 error into his extrapolations. 18 MR. LAVINE: I object, move to strike as 19 nonresponsive. 20 BY MR. LAVINE: 21 Q. My question was is there an objective 22 source, a peer-reviewed material, a learned</p>	<p style="text-align: right;">Page 316</p> <p>1 accuracy, he offers no confidence intervals, he 2 offers no test of statistical significance. 3 He offers nothing of the sort, nothing 4 of the type of thing that it would be standard 5 practice, and I'm sure is contained in every bit 6 of Dr. Duggan's published econometric work, the 7 measures of accuracy and the measures of goodness 8 of fit and all of these other measures that 9 economists and statisticians typically use to 10 measure the accuracy of somebody's estimation. 11 We have extrapolations with reasons to 12 believe that there's been error introduced to 13 these extrapolations. 14 First of all, from the very act of 15 extrapolation. And, secondly, because of the lack 16 of certainty or the lack of evidence offered that 17 he actually has the correct NDCs in the array. 18 There are lots of things in statistics 19 books and lots of things in econometrics books 20 that talk to how regression analysis, which is not 21 what Dr. Duggan has done here, but how economic 22 analysis generally is affected when you think you</p>
<p style="text-align: right;">Page 315</p> <p>1 treatise, anything of the sort, that would 2 articulate the standards that you're describing so 3 that we could look it up and determine whether or 4 not Professor Duggan was meeting those standards? 5 A. Well, one could look to an econometrics 6 book at the problems that are introduced into 7 estimation when you have problems, so-called 8 errors in variable. 9 Q. What would the rule say? 10 A. The rule would say is that when your 11 independent variables are mismeasured, your 12 estimates lose precision. 13 Q. So is that the standard that we should 14 use to judge whether or not Dr. Duggan handled 15 things appropriately with respect to showing the 16 Abbott NDCs were in the array? 17 MR. BERLIN: Objection, form. 18 THE WITNESS: My objection to Dr. 19 Duggan's analysis is we have to rely on his word 20 for how accurate these extrapolations are. 21 He's not performing anywhere in his 22 report, he performs no statistical test of</p>	<p style="text-align: right;">Page 317</p> <p>1 have one variable and you actually have something 2 else. 3 And there are ways for approaching those 4 problems, there are ways for handling those 5 problems. 6 When one is faced with such a problem in 7 an econometric analysis, one acknowledges the fact 8 and then either takes corrective action or adjusts 9 their standard, does adjustments to standard 10 errors and does adjustments to their confidence 11 intervals to take those things into account. 12 None of that's done here. We have no 13 reason to accept the accuracy of Dr. Duggan's 14 extrapolations but Dr. Duggan's word that these 15 are all Abbott NDCs. 16 And given, you know, he's a well- 17 published empirical economist, just giving in the 18 academic world, in academic research, just giving 19 the editor, or giving reviewers your word that 20 these are really good estimates would not fly. 21 That's my objection, is that this is not 22 meeting any sort of standard of accuracy that's</p>

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<p style="text-align: right;">Page 562</p> <p>1 Eli Lilly was the innovator. That's 2 right. I'm sorry. 3 Q. Are you thinking perhaps erythromycin? 4 A. Correct. 5 Q. Abbott was the branded innovator. 6 A. Was the branded innovator, yes. 7 Q. As an economist, how much should, in 8 your but-for world, how much should the states 9 have increased their dispensing fees for the drugs 10 in question when Abbott reduced its price reports 11 in the 2000, 2001 timeframe? 12 MR. BERLIN: Objection, form. 13 THE WITNESS: I've not done calculation 14 or the surveys or anything that would need to be 15 done to ascertain that. So I don't know. 16 BY MR. BREEN: 17 Q. But it's your opinion they should have; 18 right? 19 A. It's my opinion that pharmacies would 20 have found the reimbursements in line with Dr. 21 Duggan's reimbursements to be unremunerative. 22 Q. My question is how much should they have</p>	<p style="text-align: right;">Page 564</p> <p>1 goes through. 2 The DRA didn't end up being implemented 3 as yet, but yet the states were undergoing 4 precisely those reviews and at least in the case 5 of Texas were making such determinations. 6 Q. Okay. Well, when it came to IV 7 pharmacy, how many states that had already 8 increased their dispensing fees conduct a review 9 and said we have to increase them more? 10 A. I don't know the answer to that. 11 Q. So let me get this straight. Let's 12 assume that the dispensing fees for a particular 13 state are adequate, according to your whatever you 14 would decide would be adequate, we'll make you the 15 Zarr, the Medicaid Zarr, and dispensing fees are 16 adequate at a certain point in time. 17 Abbott decides though that they're going 18 to increase their price reports a thousand 19 percent. So that their AWP is a thousand percent 20 higher than the actual selling price generally and 21 currently paid in the marketplace for the drug. 22 A. A thousand percent, but it may be \$2 or</p>
<p style="text-align: right;">Page 563</p> <p>1 increased their dispensing fee for the Abbott 2 drugs when Abbott reported lower prices in the 3 2000, 2001 timeframe, according to your opinion? 4 MR. BERLIN: Same objection. 5 THE WITNESS: Again, I don't have a 6 number. I have not done the calculation. 7 But we have seen what the administration 8 fees were increased by under the MMA, which was a 9 substantial amount. 10 BY MR. BREEN: 11 Q. Well, let's talk about Medicaid now. 12 You've already said that you're aware 13 that the states were already increasing 14 administration fees. You just don't know when or 15 where or who. 16 So do you even know if it was necessary 17 to increase them any more in the post-2000 18 timeframe in connection with the Abbott drugs? 19 A. Well, again, under Medicaid and under 20 the DRA, states were supposed to review them and 21 states did undertake the review, Texas undertook a 22 review that here's what we need to do if the DRA</p>	<p style="text-align: right;">Page 565</p> <p>1 \$3 that we're actually talking about. 2 Q. Well, maybe it's \$2 or \$3, but when you 3 do infusion pharmacy how many, don't you have to 4 use these bags of solutions every time you give a 5 prescription? 6 A. It's my understanding it's close to that 7 at least, yes. 8 Q. So it's \$2 to \$3 on the bag and then 9 whatever it is on the actual drug that goes in the 10 prescription; correct? 11 MR. BERLIN: Objection, form. 12 THE WITNESS: The drug that goes in the 13 prescription? I'm not sure what -- 14 BY MR. BREEN: 15 Q. Let's say it's vancomycin. 16 A. Okay. 17 Q. Let's say that the inflated 18 reimbursement is \$10 on the bag of fluids and \$100 19 on the vancomycin. 20 MR. BERLIN: Objection, form. 21 BY MR. BREEN: 22 Q. Every time the vancomycin is</p>

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<p style="text-align: right;">Page 566</p> <p>1 administered, you need another bag of fluids; 2 correct? 3 A. Correct. 4 Q. Anyway, so let's say that Abbott decides 5 to report higher prices that results in a higher 6 AWP one year, and then the next year it decides 7 no, we're going to lower them, we're going to 8 report prices that are consistent with our market. 9 Is it your testimony that that, those 10 two decisions by Abbott to raise it and then lower 11 it again, will somehow cause the Medicaid programs 12 to have to pay a higher dispensing fee? 13 A. I'm not addressing the raising and then 14 lowering, but I was addressing the lowering to 15 levels commensurate with what Dr. Duggan has 16 proposed. 17 Q. Well, when you say lowering the levels 18 commensurate with what Dr. Duggan has proposed, is 19 it your opinion that Dr. Duggan's proposal is not 20 consistent with the regulation that required 21 estimation of acquisition cost based upon prices 22 generally and currently paid in the marketplace?</p>	<p style="text-align: right;">Page 568</p> <p>1 case, and in those situations even at current 2 levels of EAC the dispensing fees are even more 3 inadequate than they are for pills and tablets. 4 BY MR. BREEN: 5 Q. Okay. So for the vancomycin again on 6 Exhibit 4, your Exhibit 4, Deposition Exhibit 12, 7 forgetting the twenty percent range between an 8 actual WAC and an average wholesale price, 9 forgetting that range, how much are the states 10 going to have to increase dispensing fees on 11 vancomycin, Abbott's vancomycin, as a result of 12 Abbott reporting prices that are closer to market 13 based upon the studies you have reviewed? 14 A. There was not numbers given in the 15 studies that I reviewed. 16 Q. Okay. So my question then is if you're 17 going to criticize Dr. Duggan's claim-by-claim 18 drug-by-drug NDC-by-NDC specific damages model, 19 then can you point to any specific quantitative 20 evidence that an economist would utilize to 21 determine how much in your alternate world the 22 Medicaid programs are going to, according to you,</p>
<p style="text-align: right;">Page 567</p> <p>1 A. I haven't reached an opinion on that. 2 But I am saying that the total 3 reimbursement is being reduced to a level that 4 threatens the access by Medicaid patients to 5 healthcare services to approximately the same 6 degree that those services are available to 7 nonMedicaid patients. 8 Q. That's your opinion? 9 A. Yes. 10 Q. But you don't have one scintilla of 11 quantitative evidence that you've actually 12 developed yourself or reviewed that somebody else 13 did relating to the drugs at issue in this case 14 that supports that opinion; do you? 15 MR. BERLIN: Objection, form. 16 THE WITNESS: Again, I disagree. 17 For example, the Myers & Stauffer 18 reports speak to the inadequacy at existing levels 19 of EAC in the dispensing fees for pills and 20 tablets and then go on to say that this problem is 21 going to be worse for infusion drugs, which are 22 the drugs like the drugs that are at issue in this</p>	<p style="text-align: right;">Page 569</p> <p>1 increasing dispensing fees on vancomycin based 2 upon Abbott's reporting lower prices? 3 A. Again, to come to the opinions that I 4 came to in my report, I relied on the testimony 5 and the evidence in the reports that the people 6 who know the state Medicaid systems better than I 7 do, better than Dr. Duggan does, better than you 8 do, the people who are actually having to make the 9 rules day in and day out, had stated that if you 10 have drastic reductions, or even not drastic 11 reductions, if you had significant substantial 12 reductions in ingredient cost, you will also have 13 to worry about what's happening on the dispensing 14 fee side, lest you have problems with access. 15 And your expert, Dr. Schondelmeyer, says 16 exactly the same thing in his California report. 17 That reductions in the ingredient cost, modest 18 though they were compared to Dr. Duggan's 19 reduction in ingredient costs, the reductions in 20 ingredient costs in California were going to 21 require increases in dispensing fees, or else, I 22 believe in Dr. Schondelmeyer's words, you were</p>

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